

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-729*

13 **CYNTHIA NEVAREZ MONTOYA**
108 Murray Street
14 Chula Vista, CA 91910

A C C U S A T I O N

15 **Registered Nurse License No. 757275**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about August 6, 2009, the Board of Registered Nursing issued Registered
24 Nurse License Number 757275 to Cynthia Nevarez Montoya (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2013, unless renewed.

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1 notwithstanding that evidence of that misconduct may be recorded in a record
2 pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program
4 operated by any agency established under Division 2 (commencing with Section 500)
5 of this code, or any initiative act referred to in that division.

6 9. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted by a
8 board within the department pursuant to law to deny an application for a license or to
9 suspend or revoke a license or otherwise take disciplinary action against a person who
10 holds a license, upon the ground that the applicant or the licensee has been convicted
11 of a crime substantially related to the qualifications, functions, and duties of the
12 licensee in question, the record of conviction of the crime shall be conclusive
13 evidence of the fact that the conviction occurred, but only of that fact, and the board
14 may inquire into the circumstances surrounding the commission of the crime in order
15 to fix the degree of discipline or to determine if the conviction is substantially related
16 to the qualifications, functions, and duties of the licensee in question.

17 As used in this section, "license" includes "certificate," "permit," "authority,"
18 and "registration."

19 10. Section 2761 of the Code states:

20 The board may take disciplinary action against a certified or licensed nurse or
21 deny an application for a certificate or license for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the
23 following:

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25 (f) Conviction of a felony or of any offense substantially related to the
26 qualifications, functions, and duties of a registered nurse, in which event the record of
27 the conviction shall be conclusive evidence thereof.

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11. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the meaning
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
24 licensed under this chapter to do any of the following:

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26 (b) Use any controlled substance as defined in Division 10 (commencing with
27 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
28 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of
3 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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5 12. Section 2765 of the Code states:

6 A plea or verdict of guilty or a conviction following a plea of nolo contendere
7 made to a charge substantially related to the qualifications, functions and duties of a
8 registered nurse is deemed to be a conviction within the meaning of this article. The
9 board may order the license or certificate suspended or revoked, or may decline to
10 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
11 conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

12 REGULATORY PROVISIONS

13 13. California Code of Regulations, title 16, section 1444, states:

14 A conviction or act shall be considered to be substantially related to the
15 qualifications, functions or duties of a registered nurse if to a substantial degree it
16 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

17 (a) Assaultive or abusive conduct including, but not limited to, those violations
18 listed in subdivision (d) of Penal Code Section 11160.

19 (b) Failure to comply with any mandatory reporting requirements.

20 (c) Theft, dishonesty, fraud, or deceit.

21 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

22 14. California Code of Regulations, title 16, section 1445 states:

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24 (b) When considering the suspension or revocation of a license on the grounds
25 that a registered nurse has been convicted of a crime, the board, in evaluating the
26 rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

27 (1) Nature and severity of the act(s) or offense(s).

28 (2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with any terms of parole, probation,
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) If applicable, evidence of expungement proceedings pursuant to Section
5 1203.4 of the Penal Code.

6 (6) Evidence, if any, of rehabilitation submitted by the licensee.

7 COSTS

8 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
13 included in a stipulated settlement.

14 FIRST CAUSE FOR DISCIPLINE

15 (December 9, 2010 Criminal Conviction for DUI on June 27, 2010)

16 16. Respondent has subjected her license to disciplinary action under sections 490 and
17 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
18 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
19 follows:

20 a. On or about December 9, 2010, in a criminal proceeding entitled *People of the*
21 *State of California v. Cynthia Nevarez Montoya*, in San Diego County Superior Court, case
22 number M113080, Respondent was convicted on her plea of guilty of violating Vehicle Code
23 section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent
24 or more, a misdemeanor. The court dismissed an additional count of violating Vehicle Code
25 section 23152, subdivision (a), driving under the influence, pursuant to a plea agreement. The
26 court certified Respondent's BAC as .19 percent.

27 b. As a result of the conviction, on or about December 9, 2010, Respondent was
28 granted five years summary probation, and ordered to pay fines, fees, and restitution. Respondent
was further ordered to complete a three-month First Conviction Program, perform five days in the

1 Public Service Program, with credit for one day served, attend a MADD Victim Impact Panel
2 session, and comply with DUI probation terms.

3 c. The facts that led to the conviction are that on or about 5:00 in the morning on
4 June 27, 2010, two officers with the San Diego Police Department were travelling southbound on
5 Interstate 5 when they observed a car speeding. They followed the vehicle for two miles and
6 paced it at a speed in excess of 80 mph. The vehicle was swerving in its lane, and changing lanes
7 without using a signal. Upon contacting the driver (Respondent), the officer noticed a strong odor
8 of an alcoholic beverage on her breath, her eyes were bloodshot and watery, her speech was
9 slurred, and she admitted to drinking earlier in the evening at a casino. Respondent was asked to
10 exit her vehicle; she was unsteady on her feet and had to lean on the patrol car for balance.
11 Respondent was unable to perform the field sobriety tests as explained and demonstrated by the
12 officer. Two passengers in Respondent's vehicle were also too intoxicated to drive. A one-fourth
13 full bottle of tequila was found on the back seat. Respondent was arrested for driving under the
14 influence.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 17. Respondent has subjected her license to disciplinary action under section 2762,
18 subdivision (b) of the Code for unprofessional conduct in that on or about June 27, 2010, as
19 described in paragraph 16, above, Respondent used alcohol in a manner that was dangerous or
20 injurious to herself and others when she operated a motor vehicle while impaired.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Alcohol-Related Criminal Conviction)**

23 18. Respondent has subjected her license to disciplinary action under section 2762,
24 subdivision (c) of the Code for unprofessional conduct in that on or about December 9, 2010, as
25 described in paragraph 16, above, Respondent was convicted of an alcohol-related criminal
26 offense.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Welfare Fraud)**

3 19. Respondent has subjected her license to disciplinary action under section 2761,
4 subdivision (a) of the Code for unprofessional conduct in that she committed welfare fraud. The
5 circumstances are as follows:

6 a. On or about May 23, 2012, in a criminal proceeding entitled *People of the State*
7 *of California v. Cynthia Nevarez Montoya*, in San Diego County Superior Court, case number
8 CD234308, Respondent pled guilty to violating Welfare and Institutions Code section 10980,
9 subdivision (c)(2), receiving aid by misrepresentation, a felony. The court dismissed a count of
10 grand theft of real property (Pen. Code, § 487(a)), and two counts of perjury by false affirmation
11 for aid (Pen. Code, § 118(a)), pursuant to the plea agreement.

12 b. As a result of the guilty plea, on or about May 23, 2012, Respondent entered
13 into a Public Assistance Fraud Diversion Program Contract with the San Diego County District
14 Attorney's Office. The contract requires that Respondent pay restitution in the amount of
15 \$21,565 within three years, with one-third of the amount due each year. Respondent was also
16 ordered to perform 80 hours of community service. The contract allows that upon full restitution
17 within three years, Respondent would be permitted to withdraw her plea of guilty, and the court
18 would dismiss the charges.

19 c. The facts that led to the guilty plea are that on or between September 2009 and
20 August 31, 2010, Respondent willfully and unlawfully obtained public assistance by means of
21 false statements and fraud. Respondent received aid for herself and her children to which she was
22 not entitled as follows: CalWORKS: \$4,060, food stamps: \$2,663; and HUD: \$14,842, for a total
23 of \$21,565. Respondent also falsely reported her employment status in order to receive aid for
24 medical assistance.

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1 **PRAYER**

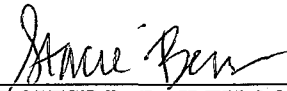
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 757275, issued to Cynthia
5 Nevarez Montoya;

6 2. Ordering Cynthia Nevarez Montoya to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: MARCH 11, 2013

12 *for* 
13 LOUISE R. BAILEY, M.ED., RN
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant

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